UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/SR.24
27 August 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 22 August 1991, at 10 a.m.

Chairman: Mr. JOINET

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GE.91-13009/3599B

The meeting was called to order at 10.20 a.m.

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (E/CN.4/Sub.2/1991/30 and Add.1-4; E/CN.4/Sub.2/1991/NGO/17; E/CN.4/Sub.2/1990/35)

1. Mr. KEILAN (Centre for Human Rights), introducing the item, recalled that the Sub-Commission had considered the question of the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers since 1980, when it had appointed one of its members, Mr. Singhvi, as Special Rapporteur to prepare a report on the subject.

2. At its forty-second session the Sub-Commission had considered a working paper prepared by Mr. Joinet (E/CN.4/Sub.2/1990/35) on means in the area of monitoring by which the Sub-Commission could assist in ensuring respect for the independence of those persons. In its resolution 1990/23 the Sub-Commission had requested Mr. Joinet to make a system-wide analysis of the advisory service and technical assistance programmes of the United Nations in so far as they affected the independence of the judiciary and the protection of practising lawyers, to propose means by which cooperation between the programmes could be enhanced, to set forth guidelines and criteria to be taken into account in the provision of those services, and to bring to the attention of the Sub-Commission information on legislative or judicial measures or other practices which had served to strengthen or to undermine the independence of the judiciary and the protection of practising lawyers. Mr. Joinet's report was contained in document E/CN.4/Sub.2/1991/30 and Add.1-4.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT;

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(d) THE RIGHT TO A FAIR TRIAL

(agenda item 10) (continued) (E/CN.4/Sub.2/1991/19 and Add.1; E/CN.4/Sub.2/1991/20-22, 24-26, 28 and 29, 50, 53 and 56; E/CN.4/Sub.2/1991/NGO/18, 19 and 28; E/CN.4/1991/18; E/CN.4/Sub.2/1990/10, 30 and 32; A/CONF/144/28; A/CONF/144/INF.2)

3. Mr. van WALT (Pax Christi International) drew attention to the case of a Tibetan doctor, Jampa Ngodrup, who had been sentenced to 13 years' imprisonment for copying two lists of names of persons arrested or injured during demonstrations in Lhasa and for giving copies of those lists to another person. He had never had a fair trial and had not had the benefit of a defence lawyer. His case was neither unique or isolated, since none of the hundreds of persons arrested or otherwise detained by the Chinese authorities in Tibet for expressing their opinions or making efforts to secure basic human rights and freedoms had had the benefit of due process. Typically, Tibetans

were detained by the police or military and sentenced on the basis of confessions extracted during extensive interrogation sessions which generally included physical torture. Many Tibetans were never formally charged but were detained, interrogated and tortured, sometimes for weeks or months, before being released. Summary executions had been avoided by the authorities in Tibet since the lifting of martial law in mid-1989. However, since February 1991 the police had reversed that policy and had stabbed demonstrators with bayonets and knives and had opened fire on them on at least two occasions. The demonstrators had not been attacking the police.

4. The first official Australian delegation to visit Tibet, which had recently returned to Canberra, had been denied access to prisons or prisoners. The authorities had also tried to prevent the delegates from having spontaneous encounters with Tibetans during the visit. Despite those limitations, the leader of the delegation had reported that Tibet's capital city was under martial law in everything but name. The delegation had witnessed clear signs of intimidation of the population by the security forces. Displays of force, frequent arrests of Tibetans, show trials and the execution of persons for believing that Tibet should be free were all part of a major effort to force Tibetans into submission.

5. Another source of concern for Pax Christi International was the fact that in the United States of America a considerable number of military personnel were in prison for refusing to fight in the Gulf war, despite their efforts to obtain conscientious objector status. Pax Christi International called for the immediate release of all military personnel imprisoned on charges relating to their efforts to be recognized as conscientious objectors and of other military personnel whose cases were still pending.

6. Martial law had been imposed in Kuwait at the end of the Gulf war and was still in effect. Trials had been held of persons, particularly Palestinians, accused of collaboration with the Iraqi occupation authorities. Deficiencies in the martial law procedures had been well documented by Amnesty International, Middle-East Watch and the Lawyers Committee for Human Rights and amounted to violations at least of article 14 of the International Covenant on Civil and Political Rights. For example, detainees were not informed of the reason for their arrest, of the charge against them or of their rights at the time of arrest and had no access to lawyers before they came up for trial.

7. The prison conditions of detainees in China also merited careful attention. The observer for EAFORD would deal with that subject in some detail.

8. Pax Christi International was also concerned that several Supreme Court decisions in the Philippines were contributing to the violation, rather than to the protection, of human rights. The decision of July 1990 in the Umil vs. Ramos case authorized government authorities to conduct arbitrary arrests without a warrant on the basis of mere suspicion of subversion or rebellion and had led to a substantial increase in the number of arbitrary arrests. The Supreme Court had also retained the so-called Ilagan doctrine promulgated during the Marcos administration which provided that the remedy of habeas corpus was not available to any person subsequently charged with a

crime, in spite of the illegality of his arrest or detention. The United Nations Working Group on Enforced or Involuntary Disappearances, in its report on its visit to the Philippines in 1990, had recommended limiting the powers of arrest and an overhaul of the law and practice of habeas corpus in the Philippines.

9. On Buka, a small island to the north of Bougainville, at present occupied by the Papua New Guinea defence force, persons suspected of sympathizing with the Bougainvillian Republican Army were being imprisoned and forced to submit to dehumanizing processes and beatings without being charged or tried. That, too, was a source of concern.

10. Pax Christi International respectfully urged that the human rights situation in Kuwait, especially in relation to detainees, be closely monitored and requested the Sub-Commission to consider the worsening human rights situation in Tibet and to appeal to the Government of the United States of America for the release of prisoners of conscience.

11. Ms. WANGNO (International Association of Educators for World Peace) said that in the past decade, especially in the past four years, thousands of Tibetans had been arrested or detained without being charged, on mere suspicion of sympathizing with, or being actively involved in, pro-independence protest marches, demonstrations and other political activities. Since April 1991, at least 35 political prisoners had been held in solitary confinement in darkened cells for up to two months for complaining about conditions or trying to send a petition to foreign visitors. Homes had been raided by security forces, and many people had been secretly arrested at night. Torture was the most frequently used method to extract information or confessions from those detained. Particularly savage forms of torture were employed, in respect of which members of the Sub-Commission might wish to refer to the reports prepared by the Commission on Human Rights Special Rapporteur on Torture. Many Tibetans had been executed in public for alleged crimes ranging from "counter-revolutionary" activities to "murder". They had had no opportunity to defend themselves in a fair trial. In nearly every case, prisoners were found guilty following the extraction of a confession. It was also believed that in recent years many Tibetans had been summarily executed in police stations, prisons or military barracks without any specific charge being brought against them.

12. If a trial took place, it was mostly held in secret, the defendants having two days' warning of the date of their trial. In one case, in December 1990 a Tibetan doctor had received a 13 years' sentence for writing out a list of people injured in a demonstration. In a typical case in July 1991, five monks had been sentenced to an average of five years' imprisonment each for staging a peaceful demonstration. In most cases relatives of executed political prisoners were charged with the cost of the bullets used to kill them. When one family member was imprisoned, the whole family was subjected to different kinds of close monitoring and harassment. Some relatives had been reported to have lost their jobs.

13. The evidence contained in his statement clearly showed the lack of human rights for Tibetans detained or imprisoned by the Chinese authorities and the absence of the right to a fair trial. The Sub-Commission was urged to undertake every possible action to improve the situation of Tibetan prisoners and detainees.

14. Mr. SOTTAS (World Organization against Torture) said that the entry into force of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment undeniably constituted important progress in protecting detainees against abuses. It should, nevertheless, be noted that the number of States accepting the competence of the Committee against Torture to receive individual communications remained very small, thereby considerably limiting its effectiveness.

15. At the Committee's fifth session in November 1990, the Committee had been confronted with a large number of communications from NGOs showing that torture remained common practice in Turkey, particularly against left-wing opponents and Kurdish nationalists. The representative of Turkey, while admitting that abuses had been committed in the past, had stated that the authorities were resolutely endeavouring to ensure greater respect for human rights after having taken concrete legislative measures, as proved by their ratification of various international and regional instruments against torture. In addition, the penal reforms under way should shortly provide detainees with the desirable guarantees.

16. In spite of that encouraging change of attitude, his organization continued to receive information attesting serious shortcomings. For instance, the recently introduced anti-terrorist law, despite certain positive aspects which had led to the release of a large number of political prisoners, contained provisions which were in contradiction with the international commitments entered into by the Turkish authorities. His organization had recently received confirmed reports of the arrest of several journalists under article 8 of the anti-terrorist law, which stipulated that any person spreading written or oral propaganda aimed at violating Turkish territorial or national unity was liable to imprisonment. In addition, article 6 prohibited the publication of information concerning individuals or other targets of terrorist activity, as well as the reproduction of statements from any organization classified as terrorist. That measure had the effect of completely muzzling the press, which could no longer state the position of the Kurdish automony movement. Moreover, the terms "terrorist" and "organization" were so widely defined in article 1 of the anti-terrorist law that an arbitrary interpretation became possible. The law did not provide for fair compensation for victims of State terrorism. On the other hand, it offered a reward to civilians who contributed towards the capture of terrorists.

17. Still more serious was the fact that the law imposed a large number of obstacles to the prosecution of torturers. Thus, public employees suspected of serious human rights violations could not be prosecuted without the agreement of the Ministry of the Interior, except in cases of murder, and if they were brought to trial, they could not be imprisoned before being

sentenced and were to be provided with three lawyers paid for by the State. Finally, they must be brought before the State security courts, the same institutions whose prosecution service had been the target of numerous allegations of torture.

18. As far as the Kurds were concerned, it should be noted that, while a certain easing of restrictions had allowed the use of the Kurdish language under certain conditions, the Kurdish community as a whole continued to be the subject of extremely severe repression and blatant discrimination. In Turkish Kurdistan several hundred cases of arrest were being recorded every week.

19. His organization had been informed of the extremely worrying situation in Nigerian prisons, where overcrowding and deplorable conditions of detention were among the main causes of the extremely high mortality rate. Such deaths were additional to those resulting from the torture and ill-treatment of political opponents. According to confirmed reports in his organization's possession, detainees were kept in chains and submitted to corporal punishment, including whipping. Most prisons lacked water, medical supplies, personnel, beds, food and clothing. Prison staff made money out of the inmates' misery by hiring out certain services. Several cases had been brought to his organization's attention where, in spite of amnesties or the removal of offences from the statute books, prisoners had not been released. Others were held for years without being brought to trial. The Sub-Commission should therefore encourage Nigeria to re-examine the whole of its prison system in order to bring it into conformity with the 1957 Standard Minimum Rules for the Treatment of Prisoners.

20. His organization also regularly received extremely worrying reports of the situation of prisoners in Zaire, particularly at the Makala Central Prison, where conditions of detention were extremely poor and ill-treatment and torture were widespread. Over the past few months, it had recorded the deaths of several dozen people resulting from torture, ill-treatment, lack of food and poor sanitary conditions in the prisons. The health of others had been severely affected. Most of the prisoners had never been brought to trial. Many of them were imprisoned simply for having voiced their opposition to the current regime or the security forces. The situation of detainees in Zaire should therefore be followed closely by the international community over the coming months.

21. Egypt was one of the more open societies in the Arab world, yet the state of emergency, in force almost uninterruptedly since 1967, conferred exceptional powers on the Minister of the Interior; they had been regularly used to make arrests, often of members of Islamic groups. Over the past two years his organization had received information on the systematic torture of detainees in prisons in the Tora district of Cairo and at the State Security Intelligence Headquarters in Lazoughly. Recently, for the first time, reliable information had been received reporting enforced disappearances in which members of the security forces were implicated. To date, as far as his organization knew, none of the officials under suspicion had been tried. The prosecution service had found it sufficient to take note of the testimonies and marks of torture on defendants' bodies. Despite the amount of evidence in

their possession, no inquiries aimed at attributing responsibility and halting the particularly disturbing violations appeared to have been made. Such passivity amounted to complicity, and it was therefore important for Egypt to take measures to put an end to those abuses if it was to maintain its favourable imagine in the eyes of the international community.

22. His organization was also extremely concerned regarding the holding of certain categories of prisoners, particularly children and the mentally ill, together with common law prisoners. They should be receiving separate treatment. For several years campaigns had been carried out in India, particularly in the State of Bihar, for the release of several thousand children imprisoned in disregard of the law and the decisions of the Supreme Court. Fortunately, the authorities in Bihar had released most of those children a few months previously. Unfortunately, however, the case of India was not an isolated one and his organization continued to receive information from different countries reporting the arrest of children under 12 years of age and their imprisonment in adult prisons. Consequently, the Sub-Commission, together with the Committee on the Rights of the Child, should create mechanisms to make it possible for cases of children being detained in adult prisons to be known speedily so that an end could be brought to the practice.

23. In countries lacking the necessary resources the mentally ill were usually held in prisons where they were mixed with common law detainees. Such was the case, for instance, in Nepal, which had only 42 beds in psychiatric hospitals and less than 10 psychiatrists to meet the requirements of a country with a population of nearly 20 million persons. Mentally ill persons who were suspected or showed signs of presenting a danger to society were interned in prisons in extremely harsh conditions for lack of an adequate hospital infrastructure. Some of them were chained to their beds and were at the mercy of their fellow detainees, since the guards showed little inclination to deal with such cases. The suggestion made by certain doctors who visited the prisons that the mentally ill be separated from the other inmates had been rejected by the guards. The Minister of Justice had stated that he was aware of the problem and that he would take measures to remedy that state of affairs, remarking, nevertheless, that the main difficulty was economic. The Sub-Commission could perhaps bring the pressing need to give priority to efforts to ensure primary health care, particularly acceptable treatment conditions for the mentally ill, to the attention of the bodies responsible for organizing economic assistance to Nepal.

24. The few examples which he had mentioned were no more than a handful of cases illustrating an all too widespread situation. While the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had established an extremely important normative framework for the struggle against ill-treatment and torture, it was worth noting that the mandate of the Committee against Torture was often too restricted to allow the effective protection of detainees, many of whom were not even held in official detention centres. It was therefore to be hoped that the Sub-Commission would take all necessary measures to provide the international community with a system of visits to places of detention, like the one already in existence in Europe. Such a system would, through its preventive effect, lead to an improvement in the condition of detainees and ensure that follow-up action would be taken.

It was essential for every prisoner to know that he was protected by international treaties and that in the event of an abuse he could bring his situation to the attention of independent bodies and rely on periodic visits by international experts. Such a system was the indispensable counterpart to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

25. Mr. OGATA (International Association of Democratic Lawyers) drew the Sub-Commission's attention to the illegal and unpunished wire-tapping of his house in Tokyo by the police, lasting for at least one and a half years, that had been disclosed in November 1986. His case was the first in which that kind of illegal action by the police had been revealed with much material evidence. An investigation by the Tokyo District Public Prosecutor's Office had proved that there was enough evidence to prosecute and convict the policemen responsible. Nevertheless, no policeman had been indicted, and a number of grounds had been put forward to justify that omission, including the need to avoid conflict with the police authorities. Even the courts had failed to take effective action in the case, despite the criticism which it had attracted in the mass media. Two civil suits were now pending in Tokyo and Yokohama.

26. Wire-tapping was a violation of article 12 of the Universal Declaration of Human Rights and of articles 17 and 22 of the International Covenant on Civil and Political Rights. Moreover, the Human Rights Committee, in its general comments of 19 May 1989, had clearly stated that wire-tapping should be prohibited. Wire-tapping had also led to the resignation of President Nixon in the Watergate scandal. He therefore hoped that the Sub-Commission would pay the necessary attention to cases of wire-tapping and to the state of democracy and human rights in Japan.

27. Mr. GARBADE (American Association of Jurists) said that his organization was very disturbed by the abolition, in some countries, of the procedural guarantees for establishing the legality of an arrest when it was made on the mere suspicion of involvement in "subversive activities". In the Secretary-General's synopsis of material received from non-governmental organizations (E/CN.4/Sub.2/1991/21) mention was made of a report that in one country, which was not named, a Preventive Custody Law authorized the authorities to arrest and to hold in custody for an indefinite period of time persons suspected of subversive activities, with no possibility of their appealing to the courts. A similar situation existed in the Philippines, with the difference that there it had been the Supreme Court which had instituted the practice, in the Umil vs. Ramos case. Taking the view that a person suspected of rebellion or subversion committed a continuous offence, the Supreme Court had ruled that he could be arrested without a warrant on the grounds that he had been caught in the act of committing an offence. Roberto Umil had been arrested while undergoing treatment in hospital, on the basis of "confidential" information indicating that he belonged to a guerrilla unit. It was sufficient that a person arrested without a warrant should later be charged for him to be deprived of the right to have the validity of his arrest verified by a court, as the Working Group on Enforced and Involuntary Disappearances had pointed out in its report of 10 Janaury 1991 on its visit to the Philippines (E/CN.4/1991/20/Add.1), which members of the Sub-Commission might wish to consult.

28. According to figures supplied by the organization Task Force of Detainees, 923 persons had been arrested in the Philippines without a warrant between August 1990 and the end of June 1991. Although 34 per cent of them had been released after a few hours or a few days, on 30 June 1991, 139 persons were still in detention, 6 of whom had not been charged. That practice was quite comparable to the one which had been condemned by the Human Rights Committee in the case of Peñarrieta et al. vs. Bolivia, cited by Mr. Chernichenko and Mr. Treat in their second report (E/CN.4/Sub.2/1991/29, para. 25). Persons suspected of being guerrilleros had been arrested without a warrant and detained for 44 days without being brought before a judge, which the Committee had deemed contrary to article 9 (3) of the International Covenant on Civil and Political Rights. Furthermore, that practice opened the door to all kinds of abuses such as mass arrests, called "saturation drives" or "aereal target zonings", in which police or military forces invested an inhabited area, usually at night, waking up the inhabitants, whom they assembled outdoors, where an informer, disguised by a hood, picked out the persons he suspected of being subversive or rebels. The persons thus designated were then arrested without a warrant and taken for interrogation, all with the blessing of the Supreme Court which, after having judged that practice illegal immediately after the overthrow of President Marcos in the case of Alinos vs. Castro in 1987, had reversed its position in a judgement of 30 January 1990 in the case of Guazon vs. De Villa (Gr. No. 80508). According to the figures of the organization PAHRA, in 1990 there had been 225 "fishing trips" of that type, to use the expression of one of the judges of the court in his dissenting opinion. The number of persons arrested without a warrant in the context of such clean-up operations had increased by 1,620 over the previous year.

29. The American Association of Jurists, however, was most disturbed by the implications for, or indirect effect on, other rights guaranteed by international instruments. Indeed those arrests without warrant enhanced the risk of torture. In the Philippines, persons arrested without a warrant were often interrogated in clandestine centres called "safe houses" as in the time of President Marcos. They enhanced the risk of disappearances and extrajudicial executions, and dealt a severe blow to freedom of opinion, association and expression, since anyone exercising those rights ran the risk of arrest under suspicion of subversive activities.

30. In quite a different area, the isolation of persons infected with HIV-virus or suffering from AIDS deserved the closest attention from the Sub-Commission, even if only a small number of countries were as yet involved. His organization invited the Sub-Commission to consider whether such isolation did not constitute a form of administrative detention, as had rightly suggested the Special Rapporteur, Mr. Varela Quirós, in his extremely thorough report (E/CN.4/Sub.2/1991/10, para. 231).

31. In another connection, the Sub-Commission should consider whether detention of that category of persons solely on grounds of their infection or illness was not contrary to the Universal Declaration of Human Rights, in particular to its article 29 (2), in so far as in the opinion of WHO there were no public health grounds to justify their isolation or quarantine. Like all other discriminatory measures that one might, on the contrary, increase the difficulties in communicating information and advice on prevention to

persons who needed it most by driving them to conceal their condition, as pointed out by the Special Rapporteur (E/CN.4/Sub.2/1991/10, paras. 155 and 336). The Committee of Ministers of the Council of Europe had adopted a resolution calling any restriction on freedom of movement of HIV-infected persons unacceptable (Recommendation No.R (89) 14).

32. Other problems linked to detention in the context of AIDS which deserved the Sub-Commission's particular attention were preventive measures against AIDS in prisons, and discrimination in many countries against prisoners thought to be infected with HIV, in particular women, prostitutes, homosexuals and a too-often forgotten category, the drug-addicts who in some countries formed up to 60 per cent of the prison population. On the other hand prophylactic measures against AIDS required particular attention in prison, for drug consumption, in spite of all efforts, remained a widespread phenomenon and HIV virus was easily transmitted among drug addicts by used syringes. Isolating those whose HIV test was positive would not avert the risk of contagion, since several months might elapse before the appearance of the first antibodies detected by the test, during which time the infected person could retransmit the virus although the test had been negative. Taking those facts into account some countries had decided to distribute condoms to prisoners: such was the case in Geneva. No country had yet contemplated making sterile syringes available to prisoners, although that measure might perhaps be necessary if not indispensable for safeguarding the right to life and health. The American Association of Jurists was aware that such measures could come into conflict with morality. It was for the Sub-Commission to carry out an in-depth examination of all aspects of the problem and formulate proposals to decide in particular which of the two rights, that of life or that of morality, ultimately deserved greater protection.

33. Ms. GRAF (International League for the Rights and the Liberation of Peoples) said that although the situation in South Korea seemed to be improving, there were at present more than 3,750 political prisoners and 4,100 persons detained for political offences: her organization was submitting a list of over 1,500 political prisoners, indicating occupations, charges, dates of arrest and sentences.

34. The "democratic promise" of General President Roh Tai-Ou had obviously not been kept: the South Korean Government had again set a record in human rights violations. They had occurred under an undeclared state of emergency enforced since the beginning of 1989 and called "Kong-An-Jong-Guk", which meant literally "state of public security": a cross between the police State that had existed under Sung-Man-Rhee and the dictatorial regime of Pak Chung-Hui. Over 80,000 soldiers, the Combat Police Force, functioned permanently as a martial force under a state of emergency. There was a frightening array of legal instruments such as the National Security Law, the Law on Assembly and Demonstration, the Labour Relations Law, the Media Standard Law and the Public Security Inspection Law, as well as ruthless repression by law enforcement agencies, especially the Agency for National Security Planning, the Information Command for Military Security and the Anti-Communist section of the Korean National Police.

35. The South Korean Government defended its legal instruments as a necessary safeguard against a non-existent "threat" from North Korea, but they had been widely used to suppress legitimate political dissent and basic freedoms and rights protected by the South Korean Constitution. In South Korea laws existed not in order to concretize and apply those freedoms and rights but on the contrary to negate them, impeding an effective implementation of constitutionalism and international and United Nations norms and standards relating to human rights. The Law on the Agency for National Security Planning allowed that agency to arrest even members of parliament and judges without a warrent; the KCIA wiretapped even the telephone of the Blue House, the Presidential mansion of General President Roh Tai-Ou. The Public Security Inspection Law, a surrogate of the former public security law, permitted the administrative detention of everyone, including those who had already served prison terms and were considered a threat to public security, without the benefit of judiciary procedures.

36. The Korean law-enforcement agencies, especially the Agency for National Security Planning, the Information Command for Military Security and the Anti-Communist section of the Korean National Police, were another obstacle to effective implementation of human rights. They were the headquarters of torture for political prisoners and persons arrested for political reasons; in that regard she invited the Sub-Commission to consult the reports presented by her organization in recent years. Two cases merited particular attention: the first was that of Mr. You Won-Ho, a companion of Reverend Mun Ik-Whan, who had been deprived of sleep for 28 days and suffered various forms of torture. In a letter to his family he warned them that it was better to kill themselves than to be taken to the Agency for National Security Planning, clearly showing how unbearable were the tortures suffered by political prisoners or detainees in South Korea. The second case concerned Mr. Pak Chang-Sou, a labour leader arrested by KCIA on 14 April 1991 and detained in a hospital in Anyang for serious head injuries caused by torture. On 5 May he had been found dead in the hospital yard. Although the Prosecutor General's Office had announced that he had killed himself by throwing himself from the hospital roof, over 25 metres high, he had probably been poisoned, since his dead body showed no other injury than that for which he was being treated.

37. Of the 143 political prisoners sentenced to 20 to 40 years' detention, 23 were over 70 years of age and two over 80. Even in medieval times persons so advanced in years had not been kept in prison.

38. Political prisoners and detainees had been imprisoned simply for exercising democratic civil rights: forming study groups, democratic trade unions or other organizations, publishing books, criticizing the military presence and nuclear weapons of the United States in South Korea, urging the withdrawal of United States forces, trying to meet North Korean students or to have cultural and scientific contacts with North Korea, demanding peaceful reunification of Korea and the abolition or drastic reform of the National Security Law, criticizing human rights violations, forming non-governmental movements for reunification, civil dialogues with North Korea or impartial understanding of North Korea, and insisting on simultaneous nuclear inspection in the south and north.

39. The South Korean regime was going against the universal tendency towards a peaceful and democratic international order free from all kinds of subordination and interference.

40. Since South Korea would shortly become a Member of the United Nations; it was opportune to demand that its Government should comply with United Nations human rights standards and with the fundamental principles of the United Nations, namely, international peace based on international democracy. She therefore appealed to the South Korean Government to abolish undemocratic, anti-national and repressive laws, beginning with the National Security Law; to suppress all unconstitutional oppressive law enforcement agencies, beginning with the Agency for National Security Planning; to set free all political prisoners and persons arrested for political reasons, beginning with those sentenced to long terms of imprisonment; to cease immediately all repressive measures against the Pan Korean Democratic Union, the Federation of Korean Students, the Federation of Democratic Trade Unions, the Federation of Democratic Teachers and other democratic organizations, beginning with the liberation of Mr. Pak-No-Hai and other workers; and to abolish immediately all measures against activists of non-governmental movements for reconciliation and reunification, beginning with the immediate liberation of Miss Rim Sou Gyong, Reverend Mun-Ik-Wan, Mr. You Won-Ho and the Catholic Pastor Mun Gyou-Hyon.

41. Mrs. CALASCIONE (Liberation) described her holiday visit to East Timor; she had started her trip in Kupang, West Timor, a typical Indonesian town, poor but with a smiling and cheerful atmosphere. Arriving in Dili, the capital of East Timor, she had been struck by the difference: soldiers on every street-corner, truckloads of armed soldiers, unsmiling civilians. Racial inequality was evident: all the office workers and civil servants she had met were Indonesians, and all the shops, restaurants and businesses were owned by Indonesians. The East Timorese had been pushed aside in their own capital, and with hundreds of new Indonesian settlers arriving on every fortnightly ferry, the East Timorese would soon be a minority in their own country. East Timorese were to be found in markets selling small bundles of fruit or vegetables, or breaking rocks to build roads. Beggars or under-nourished children were sure to be Timorese. Talking to little girls and nuns, she had found that to become a nun was a common desire: the Church represented sanctuary and protection against rape, of which she had heard many accounts, as well as accounts of men who had been killed trying to protect their wives or daughters from rape by soldiers. One village chief had told her of the rape of his niece by a group of Indonesian soldiers. When he had complained to the area troop commander, the soldiers had been punished, but a few days later they had come back to the family farm and killed three young men in retribution. Altogether the chief had lost 24 family members by torture and murder.

42. Although as a tourist she could not visit prisons, she had met a group of 25 young men who lived like prisoners, spending every night in the sanctuary of a church because they had taken part in a public demonstration. Although they had already served prison terms they were afraid to go home, and lived in constant fear of being captured and tortured again. Since their names were on blacklists they could not work or travel and had no future.

43. Timorese people had constantly sought to communicate their feelings to her and her husband so that they could inform the outside world. Repeatedly they had heard the statement "Fretilin is the people": they had met no one in favour of assimilation with Indonesia; all wanted a referendum on the right to self-determination but feared that it would not be organized until after Indonesian settlers had become the majority. One middle-aged Timorese man, a civil servant, had told her that he tried to accept assimilation in his head but could never do so in his heart, whereas young people could accept it neither in their heads nor in their hearts. He himself had been forced at gun point by an Indonesian soldier to sign the petition to incorporate East Timor into Indonesia in 1975.

44. Guerrilla units accompanied by women and children were hiding in the hills; she had photographic evidence of their armed resistance. A priest had told her that tension was higher than at any time for years: the Timorese had seen the efforts and expense involved in freeing Kuwait, and after 16 years of violent oppression they were bitter and disappointed that the world had ignored their pleas. They had pinned their hopes of expressing themselves internationally on a long-awaited visit of a Portuguese parliamentary delegation, due to arrive shortly. However, she had been told by a member of the armed resistance, FALANTIL, that 45 Indonesian battalions in Timor were trying to hunt down all potential "trouble-makers" prior to the visit. Many people expected arrest and torture, but she was sure there would be demonstrations, despite the violent aftermath to the demonstrations during the Pope's visit. Many people no longer cared about their personal safety: they had lived through 16 years of hell and wanted the world to know about it.

45. Mr. RAIANI (International Organization for the Elimination of All Forms of Racial Discrimination) said that two years had passed since the Sub-Commission had adopted resolution 1989/5 asking, inter alia, for clemency on behalf of persons detained in the People's Republic of China; recent events suggested, however, that conditions in China had not improved. It had become imperative for the Sub-Commission to reaffirm its concern over the human rights situation in China, specifically as regards the prison conditions of detainees, their right to a fair trial and the freedom from reprisal for family members to exercise their right to speak on behalf of those in detention.

46. He drew particular attention to the plight of prisoners of conscience: Amnesty International had documented over 300 cases in which political prisoners had been publicly tried since 4 June 1989. Hundreds more were believed to have been secretly tried, receiving sentences ranging from two years' to life imprisonment.

47. The Chinese legal system dealt with detention under a quasi-judicial procedure involving a form of administrative detention known as "re-education through labour" and providing for the detention, without trial, of persons holding "anti-socialist" views or who were "hooligans". That administrative detention fell outside the parameters of generally accepted standards for criminal procedures and administrative committees, which consisted largely of representatives of local government agencies, including the police, determined who was to be subjected to that form of punishment.

48. The People's Republic of China maintained that there were no "political prisoners" in China; in fact dissidents were tried and convicted under criminal law as "counter-revolutionaries" and were therefore treated as criminals, as opposed to prisoners of conscience. The term "counter-revolutionary" was vague and expansive, and essentially political in nature. Although political detainees had been subjected to the judiciary, they were in fact given sentences that were generally reserved for those administratively detained.

49. Even in the treatment of political detainees there were gross inconsistencies between current legislation and actual practice. For example, the Criminal Procedure Law stipulated that persons could be held for up to 10 days before being formally charged, and that families must be informed within 24 hours after the start of detention. In actual practice, political prisoners, notably those detained following the June 1989 crackdown, had been held incommunicado and without being charged for often up to a year, and had been denied access to both legal counsel and to their families.

50. The recent cases of prominent journalists Wang Juntao and Chen Ziming were typical: after a rapid trial on 12 February 1991, both had been sentenced to 13 years' imprisonment with an additional 4 years' deprivation of political rights. They had been held in solitary confinement in Beijing's Prison No. 2 since 2 April 1991, with no indication of when they would be transferred to regular prisons. The conditions of their current detention violated specific provisions of China's "Regulations governing re-education through labour". Conditions in solitary confinement had been described as appalling, and had caused Wang's health to deteriorate rapidly: cells were 4 metres square, unbearably hot in the summer and intolerably cold in winter. Prisoners slept on wooden pallets, their cells lit by a single 10-15 watt bulb hanging from the 5 metre-high ceiling.

51. His organization was particularly concerned with the safety and well-being of families who spoke out on behalf of prisoners of conscience; it had recent evidence that family members of prisoners had been victims of reprisal by Chinese authorities, with intimidation, harassment, denial of employment and housing being used to silence those who dared to speak out. Wang Juntao's wife, Hou Xiao Tien, had lost her home after appealing to the international community on her husband's behalf. On 1 August 1991 she had again made an international appeal for improved prison conditions, and had suffered further reprisals. Wang Juntao was at present undergoing his seventh day of hunger strike to protest against prison conditions in China. The Hong Kong Federation of Students had collected over 5,000 signatures appealing to the Sub-Commission to consider the plight of Wang Juntao and Chen Ziming, and had handed the petition to the Sub-Commission on 20 August 1991. He had just received news that the Chinese Government was prepared to let the hunger strikers die. On Friday, 23 August a worldwide hunger strike had been called to support Wang Juntao's protest.

52. International human rights organizations had extensively documented China's violation of the right to the administration of justice and the human rights of detainees since 4 June 1989. He called upon the Sub-Commission to

renew its concern about human rights violations by the People's Republic of China and to undertake: to ensure that the rights of political detainees were fully protected according to international standards of due process; to ensure that persons were not sentenced to periods of detention outside the normal criminal procedures; to take appropriate measures to ensure that laws permitting incommunicado detention were repealed; and to take appropriate action to protect the human rights of those who spoke on behalf of prisoners of conscience and to ensure their continued safety.

53. His organization's statement had been co-sponsored by International Federation Terre des Hommes.

54. Mr. KIRKYACHARIAN (Movement against Racism and for Friendship among Peoples) expressed the view that Governments which pursued a policy of repression would do well to remember that arbitrary violence was the worst possible solution to their problems.

55. For example, Turkey, for more than 60 years, had repressed the Kurdish opposition to the extent of denying its existence and using the terms banditism or separatism to characterize it. In spite of tens of thousands of victims and notwithstanding the state of war, the problem of the Kurds of Turkey was becoming more and more serious. Assassinations such as that of Mr. Vedat Aydin, the destruction of villages and the deportation of their populations would not serve to lessen Kurdish national claims; on the contrary, since Ataturk, those claims had become increasingly radicalized. If Ankara continued to pursue its short-sighted policy and to refuse a referendum in the eastern provinces, as demanded by the nationalists, coexistence between Turks and Kurds was likely to become almost impossible; currently there was still a hope that such coexistence could be achieved.

56. In Yugoslavia, the centuries-old repression in Kosovo, culminating in the elimination of any legal form of public life, had given the impression that Serbian nationalist passion was the only thing that mattered. The restoration of legality in Kosovo would be one way of alleviating suspicion and of re-establishing a common modus vivendi in the territory of the federal State. But if the repression continued, the dream cherished by some for the restoration of a "Greater Albania" would only gain ground.

57. In Morocco, it seemed that 269 Sahraouis had been released, but the identity of only 26 was known and their existence attested to. Where were the others? The newspaper Le Monde had reported a statement by the King, explaining why Abraham Sarfaty was not among those freed; Sarfaty, by refusing to rally to national unanimity, was still not in agreement with the views of the King on the Sahara. Such a statement was contrary both to the principles of the United Nations and to basic good sense. How was it possible to insist that freedom of opinion and freedom itself should conform to a definition of national unanimity provided by the Sovereign? How could such a concept be reconciled with acceptance of the referendum procedure? Such contradiction should be guarded against, as it boded no good and he was sure that the Sub-Commission might wish to express its views on the issue.

58. The State of Israel's claim that it should designate the participants in future negotiations was a further example of lack of good sense, as if the situation was not already explosive enough and as if the persons who had been objected to were not already known for their moderation. Perhaps it was their moderation that inspired fear?

59. Current events invited attention once more to the possibly irreparable political and social damage caused in the Soviet Union by the immobility and the repressive policy which had been pursued for so long and to the denial of the problems of the nationalities that had given rise to the explosion of nationalism.

60. The Sub-Commission should stress yet again that the repression of opponents and the criminalization of non-conformist opinions were the worst of political weapons, not only from the ethical but also the political standpoint. Governments must realize before it was too late that repressive policies would lead to their condemnation not only for their crimes but also for their blindness.

61. Mrs. WARZAZI noted that it was customary in the Sub-Commission to speak of individual States but not to attack a head of State. Non-governmental organizations must observe that courtesy. Moreover, she regretted that the non-governmental organizations in question had not seen fit to welcome the royal pardons accorded to all the prisoners, a list of whom had been communicated to the Centre for Human Rights.

62. Non-governmental organizations should welcome progress made in any country. To do otherwise would not encourage dialogue and progress. Furthermore, the two organizations were certainly not motivated by concern for the prisoners but by prejudice against Morocco.

63. Mr. SAFFARI (International Falcon Movement) said that among the countries which violated article 9 (1), of the International Covenant on Civil and Political Rights, Iran was unique in that the Government's policy of violation was both open and official. In accordance with the Iranian judicial system, the sentence of execution was predetermined for the opposition. The only question was how many should be condemned to die, one thousand or many thousands. In June 1990, Mohammad Yazdi, head of the judicial system of Iran, in addressing the issue of the Mujahidin opposition, had stated that Iran's judicial law was based on condemning the organization as one integrated entity and not as individuals. On the basis of that law, anyone who to any extent sympathized with such an organization would be sentenced to death.

64. A report by the Committee of Lawyers for Human Rights, issued on 20 May 1991, had stated that the Iranian authorities would appear to have misled the Special Representative regarding the new law concerning "legal counsel". The term "attorney", which under Iranian law need not be fully qualified, had been wrongly translated in the law as "legal counsel". The report had added that the draft bill in its then current form would be of little practical benefit to defendants wishing to be represented by legal counsel of their own choosing. The international community should therefore be cautious not to give the Iranian authorities credit for reforms which they did not intend to implement.

65. Although many arbitrary arrests and executions and unjust judicial procedures had been implemented during the period of the Iran-Iraq war, the most vicious wave of executions of political prisoners in Iran had come after the war.

66. The labelling of the opposition as "terrorist" was baseless, for two clear reasons. Many people had been arrested and imprisoned without trial for their beliefs, including people loyal to the regime as a whole and had also been denied their basic rights, including the right to legal counsel. The report of the United Nations Special Representative, issued in February 1991, had cited examples. Moreover, the identity of the armed opposition had been clearly established and it was overtly engaged in a war of liberation. It operated within the framework of the National Liberation Army (NLA) of Iran, whose combatants wore a specified uniform. The NLA had announced a commander-in-chief and displayed its weaponry openly; it functioned in accordance with the Geneva Convention of 12 August 1949. Incidentally, some 2,500 guards captured by that army had all been set free and the International Committee of the Red Cross had been notified of their cases in detail.

67. The Iranian Government was ignoring the recommendations of the United Nations Special Representative in regard to the prevention of ill-treatment and torture during interrogation and imprisonment and, on 16 December 1990, the head of the Supreme Judicial Council had stated that, in certain cases, the judge would sentence accused persons to physical chastisement, whether flogging or prison, in order to make them reveal information.

68. One example of daily life in prison had been provided by a former prisoner who had stated that in Gohardasht prison, many prisoners had been lined up while others had been brought in to watch. A number of hangman's ropes had been set up in front of the line and the first prisoner was then pushed forward and the noose placed around his neck. He was then asked whether he was prepared to appear in a televised interview and confess. Following his refusal, he was hanged. The same process was repeated with the other prisoners. All prisoners were at risk of execution and judicial procedures were completely irrelevant. It was for that reason that the International Committee of the Red Cross had been denied permission to visit Iranian jails for the past year.

69. Iran did not confine its abuses of the judicial system to its own territory. Only one day after the assassination in Geneva of Dr. Kazem Rajavi who, according to Swiss police, had been murdered by Iranian agents, a leading official of the regime had stated that it was a duty to identify and kill the enemy, wherever he might be. The same was true in the case of verdicts and sentences passed by the Iranian judiciary for the assassination of writers and translators of other nationalities.

70. Mr. LITTMAN (World Union for Progressive Judaism) suggested that now that President Gorbachev was back at the helm, the Sub-Commission might like to consider sending a warm message of esteem to him as a leading statesman who, whatever his human faults, had changed the face of history. Such a message might include Boris Yeltsin, whose historic role in stemming the tide of tyranny had placed him firmly in the ranks of contemporary heros.

71. At its forty-first session in 1989, the Sub-Commission had adopted two resolutions relating to hostage taking, notably resolution 1989/26 which had been adopted shortly after the savage execution of Lt. Col. William R. Higgins, the Commander of the United Nations Truce Supervision Organization (UNTSO) in Lebanon. The Sub-Commission had decided to remain seized of that question at its forty-second session, in 1990.

72. The forty-second session had begun on 6 August 1990, exactly four days after Iraq had occupied Kuwait, retaining against their will nearly 2 million foreigners, of whom about 20,000 westerners were categorized as "guests" reserved for "special treatment". Surprisingly, the Sub-Commission had waited three weeks before grappling with that massive hostage problem and it was only on 24 August that it had decided on the grounds of human rights and humanitarian law, to appeal strongly to the Government of Iraq to facilitate the immediate departure from Kuwait and Iraq of the nationals of third countries. Historians might be surprised to discover how little had been said at the forty-second session on that particular topic, although it was undoubtedly the most spectacular hostage haul of all time, shown daily on every television network. Apart from that appeal, the Sub-Commission had not remained seized of the hostage issue itself. His own proposal that the Sub-Commission should find time to debate the thematic question of hostage taking and that the Special Rapporteur should include it under the question of detentions had not been taken up.

73. The brighter side had been highlighted four months earlier by Colonel Kadhafi's unexpected stand against hostage-taking, when he had obliged the Abu Nidal gang to release their hostage families and had called on Muslims to adhere to the noble Islamic values which affirmed the honour and humanity of man and the non-taking of innocent hostages. Two years earlier, Sheikh Muhammad Hussein Fadlallah, the spiritual guide of the Hezbollah in Lebanon, had also felt anxiety about the hostage problem which he had said was hurting the credibility of the movement.

74. The previous week he had raised the question of the fate of the 11 Lebanese Jewish hostages, some of whom had been tortured and probably executed, simply because they were Jews. Only four bodies had ever been recovered, barbarously thrown on to a garbage heap. The first to be abducted had been Salim Murad Jamoos, secretary of the Beirut Jewish Community who had been hauled out of a West Beirut synanogue on 15 August 1984. The following year it had been the turn of the president of the Jewish Community, Isaac Sassoun and then of Haim Cohen Hlailah and Professor Isaac Tarab, a 70-year-old retired teacher of mathematics, both of whom had allegedly been executed in late December 1985. The executions of Ibrahim Benesti and Dr. Elie Hallak, the vice-president of the Jewish Community and known to all as "the doctor of the poor" had been announced in February 1986. Although many appeals had been made by the local population to spare Dr. Hallak's life, the response of his captors had been that they had executed the sentence of Allah. A community of 10,000 persons 40 years earlier had been reduced to about 20 persons, half of whom were hostages or mutilated corpses.

75. It was the hope of the World Union for Progressive Judaism and other Jewish organizations throughout the world, that the tragic plight of the Lebanese Jewish hostages would not be forgotten. They should be freed along with the others and the tiny remnant of a 3,000-year-old community should be allowed to leave the war-torn land of Lebanon.

76. In conclusion, his organization urgently requested the Sub-Commission to adopt a unanimous resolution condemning unequivocally and unconditionally the taking of hostages, their mistreatment and their assassination. That condemnation should also encompass any ideology, whether allegedly of a religious nature or otherwise, that sanctioned such despicable acts against humanity and against civilization. Such acts must be outlawed by the community of the world's nations.

77. Ms. GUZMAN (Latin American Federation of Associations of Relatives of Disappeared Detainees) expressed the view that the practice of forced and involuntary disappearance was intimately linked with issues relating to any form of detention and imprisonment, to the application of states of emergency or siege and to the administration of justice.

78. The situation of political detainees and prisoners continued to be a matter of concern even in States with constitutional Governments. In Chile, more than a year after the end of the Pinochet dictatorship, more than a hundred political prisoners remained in prison and no attention had been given to the fact that all of them had been tortured and sentenced without a fair trial. They remained in prison for the crime of having opposed the dictatorship in one way or another. The National Coordinator of Political Prisoners in Mexico had reported that as of 12 April 1991, there were 86 political prisoners in the Federal District and in the States of Michoacàn, Morelos, Veracruz, Jalisco, Hidalgo, Chiapas, Guanajuata and Oaxaca. The massacre of political prisoners in Peruvian jails some years earlier had never been explained notwithstanding the pledge of former President Alan García to find those responsible.

79. Since the coming into force of the anti-terrorist law on 12 April 1991 in Turkey there had been substantial discrimination between Turkish political prisoners and Kurds. That law had conferred on political and common Turkish prisoners the right of conditional freedom while the Kurds remained in prison because they had been tried under article 125 of the Criminal Code on cases of separatism which withheld such benefits from them. Such treatment contravened the Turkish Constitution which stipulated the equality of all citizens; in practice however the Kurds received different treatment because of their nationality. Reasons for detention included participation in hunger strikes, the expression of opinions contrary to the ideology of the Turkish State and attendance at the funeral of a Kurdish combatant or military person. Interrogations were accompanied by intimidation and torture.

80. In East Timor during the previous year 500 persons had been detained for the purpose of intimidating young persons who had protested in the streets against Indonesia; many had been tortured and in some cases family members had been seized by the security forces as hostages. Such detainees had been denied access to a proper defence.

81. States of emergency, siege or exception provided the ideal means for carrying out violations of human rights. A case in point was that of the disappearance of Guadalupe Ceollocunto during the morning of 10 June 1990, the day of presidential elections in Peru, when the entire country was under curfew under the complete control of the armed and security forces. It was very important that people in general should be aware of the meaning of a state of emergency or exception and in particular that, during such a state, rights were specifically suspended.

82. The great weakness of Latin American States lay in the administration of justice. The recourses of habeas corpus, amparo or presentación personal did not achieve their goal of protecting people and, out of many cases which had been taken up, very few had produced results. The judicial power was completely ineffective and delays in justice were widespread. Moreover the judicial power lacked independence and was subject to political pressure and, in many cases, to threats and intimidation. It lacked authority before special jurisdictions such as that of the military and the security forces. The existence of governmental commissions and institutions for the promotion and protection of human rights did not in themselves guarantee respect for human rights and to a large extent their functions were limited to receiving complaints; they lacked facilities for in-depth investigation and for the initiation of legal proceedings which would ensure punishment for the guilty. The Truth and Conciliation Commission of Chile had produced a report which confirmed complaints of serious violations of human rights in that country during the dictatorship. It was to be hoped that it would now be possible to discover those responsible in the State security organs.

83. She invited the Sub-Commission's attention to the issue of impunity. While the full rigour of the law was applied to those who were in opposition Government, laws had been adopted for the granting of amnesty to those guilty of serious violations of civil, political, economic, social and cultural rights, and military personnel who had confessed to violations received light penalties in most cases and were generally amnestied and often rewarded with promotion for services rendered. The impunity enjoyed by those responsible for human rights violations was encouraging them to commit new crimes. Such was the case of the disappearance of Leonel Ulises Lopez Santamaria in Colombia; proceedings in a military court produced no results although confidential information had pointed to a number of retired military personnel. on 5 November 1985 José Manuel Lopez, father of the disappeared, had been tortured and murdered for the crime of having assisted in the investigation to find his son. On 22 July 1991 Marco Julio Lopez Hernandez was murdered in Honduras for the crime of attempting to elicit the truth regarding his brother Enrique Lopez Hernandez who had disappeared on 24 January 1982 and for combating violations of human rights. Such crimes were clearly the result of the impunity enjoyed by those responsible for violations of human rights.

84. There could be no question of relatives entering into discussions about indemnity until the truth was known regarding each disappeared person and until those responsible for those crimes against humanity had been tried and punished. Once those conditions had been fulfilled, it would be possible to embark on a true process of pacification and reconciliation.

85. Mr. NEUDEK (Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs) said that the Centre for Social Development and Humanitarian Affairs maintained close contacts with the United Nations human rights programme in all activities relating to human rights in the administration of justice. A priority area of cooperation between two centres continued to be technical cooperation and advisory services. UNOV/CSDHA had been represented at the third inter-agency meeting on advisory services in the field of human rights held in Geneva on 18 April 1991. It had also taken part in training courses or seminars on human rights and the administration of justice organized in 1991 by the human rights advisory programme for public officials from developing countries in San Remo, Brasilia and Cairo.

86. The Eighth United Nations Crime Congress had been held in 1990 in Havana. Its report was available in document A/CONF/144/28. The Congress had recommended that the United Nations crime programme should be reviewed by a ministerial meeting to be held in Paris in November 1991, the results of which would be submitted for further action to the General Assembly in December that year.

87. In preparation for that ministerial meeting an intergovernmental working group had met in Vienna two weeks before and made a number of recommendations. First, the United Nations Committee on Crime Prevention and Control should be dissolved and replaced by a 32-member functional commission of the Economic and Social Council which would meet annually for not less than one week. Second, the future commission would be assisted by a limited number of experts appointed by the commission to serve in their individual capacity. Third, the quinquennial United Nations Crime Congresses would be retained, but the interregional preparatory meetings would be abolished and the regional meetings retained for regions that requested them. Last, concerning the organizational structure of the secretariat, it was recommended that the Crime Prevention and Criminal Justice Branch should be upgraded into a division as soon as possible within the current overall resources of the United Nations, bearing in mind the structure of UNOV.

88. The Havana Congress had been the most productive of all the congresses held in that area so far. It had adopted inter alia several international instruments relating to human rights in the administration of justice, namely: basic principles on the use of force and firearms by law enforcement officials; basic principles on the role of lawyers; guidelines on the role of prosecutors; basic principles for the treatment of prisoners; standard minimum rules for non-custodial measures; a model treaty on the transfer and supervision of offenders conditionally sentenced or conditionally released; guidelines for the prevention of juvenile delinquency; and rules for the protection of juveniles deprived of their liberty.

89. The Congress had also provided policy guidelines for further standard-setting in priority areas including pre-trial detention, HIV/AIDS in prison, assessment for the release of life sentence prisoners, prison management and community-based sanctions, and protection of the human rights of victims of crime and abuse of power.

90. The Home Office of the United Kingdom had generously offered to organize and fund an international expert meeting on implementation of United Nations standards in crime prevention and criminal justice to be held in Vienna in October 1991 in cooperation with UNOV/CSDHA. The Chairman of the Sub-Commission had accepted an invitation to attend, and the Centre for Human Rights would also be represented at that meeting.

91. A debate on capital punishment had taken place at the Congress and a draft resolution entitled "Death penalty" introduced by the representative of Italy. That resolution would inter alia have invited States that had not abolished capital punishment to consider the possibility of establishing, within the framework of their national legislations, a moratorium on its application, at least on a three-year basis, or of creating other conditions under which capital punishment would not be imposed or executed, so as to permit a study of the effects of abolition on a provisional basis. The draft resolution had been rejected by a roll-call vote of 48 in favour to 29 against, with 16 abstentions.

92. He expressed appreciation for the cooperation and support of the Centre for Human Rights for the programme of CSDHA, which he hoped would continue and intensify, particularly in the context of preparations for the World Conference on Human Rights in 1993.

93. Mr. ALFONSO MARTINEZ recalled with pleasure that he had sponsored the Sub-Commission's resolution 1989/27 entrusting Mr. Chernichenko and Mr. Treat with the preparation of a report on existing international standards pertaining to the right to a fair trial. He congratulated the Special Rapporteurs on the methodology and arrangement of the subject-matter of their second report (E/CN.4/Sub.2/1991/29).

94. In Chapter II, the authors reported on the most recent developments and drew attention to the decisions taken at the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders held in Havana in December 1990, which were of particular relevance. He pointed out that a sentence had been omitted from paragraph 23 of the Spanish language version of the report, concerning the right to notice for any person arrested or detained on a criminal charge. Chapter III was particularly useful since it provided an initial summary of the interpretation of the right to a fair trial in the decisions of the Human Rights Committee. In section A, he noted that the authors had included the right to habeas corpus. In that connection, he suggested that the document prepared by Mr. Carey for the Working Group on Detention would be of use to the authors in their future work. In his view the right to habeas corpus should not be suspended, even in states of emergency. On section B, he considered it important that in future studies Mr. Chernichenko and Mr. Treat should look into provisions to ensure that minors were detained separately from adults. The authors had very properly referred to arbitrary restrictions to the right to correspond with and to see family. Their future studies should mention the fact that the right to correspondence and visits should not be limited to the family. In the case of foreigners, visiting rights should be extended to consular officials. Turning to section C, he stressed the importance of the provision that everyone charged with a criminal offence had to be informed promptly, in detail, and in

a language she/he understood of the nature and cause of the charge. Referring to section E, he thought it important to ensure that any lawyer assigned to or chosen by an accused person should have the right to exercise his profession and not be disqualified by law or by a professional body. Account must therefore be taken of the provisions governing the exercise of the legal profession in each country. The Spanish translation of the title of part II of section F, would more properly be rendered as "Igualdad de oportunidades o de recursos procesales". On the right to appeal (paras. 97 and 98), it was important for the Special Rapporteurs to see whether national legislation in countries that still had capital punishment could not include provisions for automatic right of appeal or review of the sentence by a higher court. It is also important to study the practical application of the internationally-accepted norm that minors under 18 years of age and pregnant women should not be sentenced to death. In the questionnaire in future versions of their report he hoped that the Special Rapporteurs would include questions on the treatment of minors in prison, the death penalty for minors and the automatic review of sentences of capital punishment.

95. Mr. PREJEAN (International Indian Treaty Council) informed the Sub-Commission that the hearing of Leonard Peltier, a well-known political prisoner, had been rescheduled for 2 October 1991 by a magistrate whose order was based on a government motion to dismiss two of the three issues of the writ - manipulation of the jury through fear and intimidation and government misconduct - and limit the evidence that could be presented at the hearing. The Government had argued that any issue that could have been raised in an earlier writ and was not raised could not be raised in a later writ. It was expected that the judge would rule in favour of the United States Government and that an appeal would be made against his ruling.

96. The remaining, and the most important, issue pending for the hearing was the denial of the United States Government of due process of law to Mr. Peltier. The Government knew that the case of Mr. Peltier had been tainted by the perception that he was the actual shooter rather than an aider and abettor. At his trial the Government had maintained that Peltier was the shooter but later before a panel of the court of appeal had admitted that it could not prove who actually fired the shots that caused the deaths of agents Cole and Williams. Clearly Peltier should not have been tried and convicted as the principal and should have been allowed to enter a plea of self-defence.

97. The history of the case demonstrated that there had been disruption and manipulation by the United States Government. The delay by the court was an attempt to defuse national and international support at his hearing. However, many of Mr. Pelter's supporters, including Senator Daniel Inouye, had agreed to be present at the rescheduled hearing.

98. Meanwhile Mr. Peltier's attorneys would file a motion to reduce his sentence which if successful could make him eligible for immediate parole. Senator Inouye had said that he would try to call a Senate hearing to investigate the case.

99. Awareness was spreading in the United States about the role of the Government in the activities of the FBI in Indian country and in the prosecution of Mr. Peltier. He appealed to all concerned to continue to write letters and circulate information about the trial.

100. A recent vote by the United States Senate on the application of the federal death penalty on Indian reservations was a grisly reminder that the United States Government would allow the Indians to kill Indians, as if their own genocidal policies had not killed enough of them. When the question of self-determination and protection of inherent rights to sovereignty of indigenous nations was put to invader Governments, it was, however, tactfully avoided.

101. In Western Sahara, the Security Council had adopted a peace plan to resolve the conflict between the Polisario and the Moroccan occupiers. The international community must be prepared to make Morocco respect the referendum and the democratic will of the Saharan people. Eight hundred disappeared Saharans were still suffering in Moroccan jails. Morocco had finally recognized their existence by releasing 27 of them, although no non-governmental organization had yet been able to meet them.

The meeting rose at 1.05 p.m.